

PURCHASING AND LICENSING COMMITTEE

12-0551R

RESOLUTION IN THE MATTER OF THE OFF SALE INTOXICATING
LIQUOR LICENSE OF CITY WINE & LIQUOR STORE, INC.
(WAREHOUSE LIQUOR STORE), 104 WEST CENTRAL ENTRANCE.

City Proposal:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

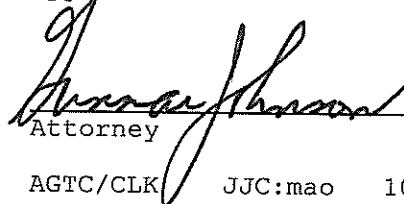
(a) On September, 5, 2012, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of City Wine & Liquor Store, Inc., d/b/a Warehouse Liquor Store, 104 West Central Entrance, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on November 12, 2012, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of City Wine & Liquor Store, Inc., d/b/a Warehouse Liquor Store, 104 West Central Entrance, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 for the first offense payable within 30 days of final city action.

Approved as to form:



Attorney

AGTC/CLK JJC:mao 10/19/2012

Alcohol, gambling and tobacco commission discussion of 9/5/12: The police department conducted alcohol compliance checks on April 11, 2012, and the clerk was issued a ticket for selling alcohol to an underage individual. According to City Code, the licensee is responsible for the actions of the employees, and the licensee was also issued a ticket. The Alcohol, Gambling and Tobacco commission (AGTC) held a hearing on September 5, 2012, regarding the off sale intoxicating liquor license of Warehouse Liquor Store. This was the first offense for Warehouse Liquor Store since 2007 and the AGTC fined the licensee \$500 which is accordance with the guidelines set forth in Section 8-9 of the City Code.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **City Wine & LQR Store, Inc., d/b/a Warehouse Liquor Store**, 104 West Central Entrance, Duluth, Minnesota 55811.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on September 5, 2012, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on September 5, 2012 upon completion of the hearing.

Terri L. Lehr, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Randolph Mallow, authorized agent, appeared on behalf of the Licensee.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor "off-sale" at the premises located at 104 W. Central Entrance, Duluth, Minnesota.
2. On April 11, 2012, an employee of Licensee was issued a citation for sale of intoxicating liquor to a person under the age of 21 in violation of Duluth City Code section 8-28. The employee was convicted of the violation on June 25, 2012.

3. The Licensee was also issued a citation under Duluth City Code section 8-35 for the illegal sale and convicted of this offense on April 24, 2012.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of September 5, 2012.
5. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.

CONCLUSIONS

Based upon these facts, the commission makes the following conclusions:

1. Section 8-9(b)(1) of the Duluth City Code provides that the violation of any law relating to the operation of a liquor establishment shall be deemed to be good cause for disciplinary action up to and including imposition of a civil penalty, license suspension or license revocation.
2. Section 8-35 of the Duluth City Code provides that the licensee shall be responsible for the conduct of its place of business and any violation of Chapter 8 of the Duluth City Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.
3. The Licensee is liable for the violation occurring on its licensed premises on April 11, 2012.
4. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for the current violation is a \$500 civil penalty.

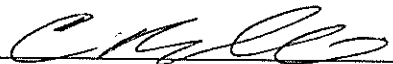
RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose a civil penalty as follows:

1. Payment of a \$500 penalty; and
2. Pursuant to Duluth City Code Section 8-9(c), the civil penalty is due and payable within 30 days of council action.

Dated: 10/3/12

DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION

By: 
Chris Pekkala, President

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: **City Wine & LQR Store Inc. d/b/a Warehouse Liquor Store**, Attention: Randolph Mallow, 104 W. Central Entrance, Duluth, MN 55811

PLEASE BE ADVISED that on **September 5, 2012** , at 4:45 p.m. in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 thru §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission

and one will be appointed.

A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing, unless the hearing date is less than 20 days from the issuance of the notice of hearing.

The person representing the City, who you should contact to discuss settlement or other concerns is Terri L. Lehr, Assistant City Attorney.

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. The above-referenced Licensee is licensed by the City of Duluth to sell intoxicating liquor “off-sale” at a premises located at 104 W. Central Entrance, Duluth, Minnesota.
2. On or about April 11, 2012, Heather Axtell, an employee of Licensee, sold an intoxicating beverage to a person under the age of 21. Axtell was cited for the violation and convicted on June 25, 2012. *See City Doc. Nos. 1-3 (Duluth Police Department Report ICR# 12062248; Citation #690600000283; and St. Louis County District Court Register of Actions).*
3. Licensee was cited under Duluth City Code Section 8-35 for the unlawful sale and convicted of this offense on April 24, 2012, paying a fine of \$200. *See City Doc. Nos. 4-5 (City of Duluth Ordinance Violation Ticket LP10004058 and Proof of Payment of Fine).*
4. This is the Licensee’s first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9. The presumptive penalty on a first offense is a \$500 civil penalty.
5. Section 8-9(b)(1) provides that violation of any law relating to the operation of a liquor establishment shall be deemed good cause for suspension or revocation of a liquor license.
6. Section 8-9(c) provides that “No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action.”

Pursuant to City Code Sections 8-9(a) and (b) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached).

Dated: 7/14/12

JEFFREY J. COX, Secretary
Alcohol, Gambling and Tobacco
Commission

and

TERRI L. LEHR
TERRI L. LEHR, (0191668)
Assistant City Attorney

Gunnar B. Johnson, City Attorney
Attorneys for the Alcohol, Gambling and
Tobacco Commission

Duluth Police Department
Main Office

Reported Date: 04/11/2012 Time: 19:00 Case No.: 12062248
Code: Crime:
Class: Occurrence Date:
Location: 104 CENTRAL ENTRANCE W, 1DU, DULUTH (CITY), . ,

NARRATIVE

SYNOPSIS:

On 04/11/2012 at approximately 1900 hours I, Officer McClure/384, Squad 66, was doing alcohol compliance checks. The following report will detail my involvement in issuing a citation to an employee from The Warehouse Liquor Store for selling alcohol to a minor.

NARRATIVE:


On 04/11/2012 at approximately 1905 hours I, Officer McClure/384, Squad 66, was doing alcohol compliance checks in several establishments within the Duluth area. Working with me that night was a 19 year old college student named JEREMY O'CONNOR. I verified O'CONNOR's date of birth by looking at his Minnesota issued driver's license, which made him 19 years of age. O'CONNOR has worked with the Duluth Police Department before doing compliance checks and he is presently a law enforcement student.

I brought O'CONNOR to The Warehouse Liquor Store. I dropped him off and informed him to try to buy alcohol. O'CONNOR went inside the establishment and tried to purchase a six pack of Miller Light beer. After approximately two or three minutes, O'CONNOR walked out of the establishment holding a brown paper bag with a six pack of Miller Light beer inside of it. I asked O'CONNOR what had happened. He said that a female employee, who was approximately 40 years of age, let me purchase the beer. I asked O'CONNOR if she asked to see his ID. He said "yeah, she glanced at it but still sold me the alcohol".

At that time I proceeded inside The Warehouse Liquor Store where I located HEATHER AXTELL, who was the employee who sold O'CONNOR the alcohol. I informed AXTELL that I was a Police officer with the City of Duluth and we were performing compliance checks and that she had just sold to a minor. AXTELL was surprised and said she thought she looked at his ID and thought that he was 21.

I issued AXTELL a citation for Selling Alcohol to Minors, Ordinance 8.28.

CITATION

State of Minnesota		Citation # 6906000000283		 690600000283	
County Name St Louis		CNIC# 120 062245			
Identification: <input type="checkbox"/> DL <input type="checkbox"/> DVS Web <input type="checkbox"/> Photo ID <input type="checkbox"/> FP <input type="checkbox"/> Other		DL Number 524910615 815		<input type="checkbox"/> MN <input type="checkbox"/> CDL <input type="checkbox"/> State	
Name Harber Ann Atkell		First Middle Last Suffix 1307 Standard Ave			
Address - Street, Apt #		City Duette		State MN	
DOB (mm/dd/yyyy) 04-20-1971		Height 5-7		Weight 145	
Gender Female		Eyes Grey		Hair Blk	
Juvenile's Guardian/Address		Same Address as Juvenile <input type="checkbox"/>			
Veh. Lic. No.	Plate Year	State	Make	Style	Color
Date of Offense 4-11-12	Type of Offense 1865	<input type="checkbox"/> Accident/Crash	<input type="checkbox"/> Property	<input type="checkbox"/> Injury	<input type="checkbox"/> Fatal
<input type="checkbox"/> Driver <input type="checkbox"/> Owner <input type="checkbox"/> Passenger	<input type="checkbox"/> Operate	<input type="checkbox"/> Parked	<input type="checkbox"/> Booked	<input type="checkbox"/> Pedestrian	
Offense Location 104 W. Center Extreme	Charge Description Selling to minors	Statute/City/Township Duette 8.08	PM, M, GM PM, M, GM		
Offense	Charge Description	Statute/Ordinance	PM, M, GM		
Offense	Charge Description	Statute/Ordinance	PM, M, GM		
Offense	Charge Description	Statute/Ordinance	PM, M, GM		
<input type="checkbox"/> Speed 169, 14 (subd.)	<input type="checkbox"/> No Seat Belt Use 169.699, (1e)	<input type="checkbox"/> No Proof of Insurance 169.701	<input type="checkbox"/> 3rd Violation		
AC Taken: <input type="checkbox"/> AC	Test type: <input type="checkbox"/> Refused	<input type="checkbox"/> Breath	<input type="checkbox"/> Blood	<input type="checkbox"/> Urine	
<input type="checkbox"/> Unsafe Conditions	<input type="checkbox"/> Seized Zone	<input type="checkbox"/> DOT#	<input type="checkbox"/> Commercial Veh.		
<input type="checkbox"/> Weather	<input type="checkbox"/> Endangering Life & Property	<input type="checkbox"/> Work Zone	<input type="checkbox"/> #Pounds Overweight	<input type="checkbox"/> Hazardous Material (DOT)	
216-340-6419 6 pm					
If this is a payable citation, you must pay the amount owed, or schedule an appearance within 30 days from the date the citation was issued.					
See the back of this citation for more information.					
Officer(s) Name(s) S. McElroy	Officer No(s) 384	Prosecutor	Date Issued		
Controlling Agency (CAG)	How Issued <input type="checkbox"/> In Person <input type="checkbox"/> Mailed <input type="checkbox"/> Left at Scene	Date Issued			

69060000002

REGISTER OF ACTIONS
CASE No. 69DU-VB-12-4544

State of Minnesota vs HEATHER ANN AXTELL

§
§
§
§
§
§
§

Case Type: Crim/Traf Non-Mand
Date Filed: 05/09/2012
Location: - St. Louis-Duluth

PARTY INFORMATION			Lead Attorneys
Defendant	AXTELL, HEATHER ANN 1307 STANFORD AVE DULUTH, MN 55811	Female DOB: 04/20/1971	
Jurisdiction	State of Minnesota NONE		MARY E ASMUS 218-730-5490(W)

CHARGE INFORMATION			
Charges: AXTELL, HEATHER ANN	Statute	Level	Date
1. DPD-LIQUOR-SALES TO MINORS PROHIBITED	DU8.28	Petty Misdemeanor	04/11/2012

EVENTS & ORDERS OF THE COURT	
DISPOSITIONS	
06/25/2012	Plea 1. DPD-LIQUOR-SALES TO MINORS PROHIBITED Guilty
06/25/2012	Disposition 1. DPD-LIQUOR-SALES TO MINORS PROHIBITED Convicted
06/25/2012	Payable without appearance 1. DPD-LIQUOR-SALES TO MINORS PROHIBITED 04/11/2012 (PMD) DU8.28 (ALCOHOL)
Level of Sentence: Convicted of a Petty Misdemeanor	
OTHER EVENTS AND HEARINGS	
05/09/2012	Citation E-Filed
06/25/2012	Failed to Appear or Pay Fine in Lieu of Appearing
07/09/2012	Sent to Collections

FINANCIAL INFORMATION		
	Defendant AXTELL, HEATHER ANN	
	Total Financial Assessment	585.00
	Total Payments and Credits	0.00
	Balance Due as of 07/10/2012	585.00
05/09/2012	Transaction Assessment	585.00

CITY OF DULUTH CITY ORDINANCE VIOLATION

This Citation charges you with a violation
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number	12-062248		Date/Time Issued	4-18-12 @ 1400	
Alleged Violator's Name					
Warehouse liquor store					
Address		City	State	Zip Code	
104 W. Central Ent. Duluth, MN. 55811					
DOB	Phone Number				
Vehicle Information					
License No.	State	Reg. Expires			
Vehicle Make	Model	Color			
Violation Information					
Date of Violation	4-11-12		Time of Violation	1905	
Location					
104 W. Central Entrance					
Charge	license liable		Ordinance No.	8-35	
Description Clerk at store sold alcohol to minor. Licensee is also liable for sale					
Officer Signature					
Officer Name (Print)				Badge No.	
Cha Vang				375	
Served: In person <input checked="" type="checkbox"/>		Positively Identified <input type="checkbox"/>			
By mail <input type="checkbox"/>					
Date Due:	Minimum Fine Amount Due:				
4-25-2012	<input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00				
Ticket Number:		LP10 004058			

Local Ordinance Ticket Inquiry 2 - Version 1.1.3

Ticket Info

Ticket Number: **EP100H058**

Issue Date: **04/11/2012**

Issue Time: **13:05**

Defendant Info

Driver Lic/State: **008**

Name Last/First/M: **LIQUOR STONE** **WAREHOUSE**

Street Address: **104 W. CENTRAL ENTRANCE**

City/State/Zip: **DULUTH** **GA** **30133**

Ticket Detail

Free Amount:	200.00	Paym. Entered:	04/24/2012
Penalty:	.00	Return Date:	
Miscellaneous:	.00	Notice1 Date:	
Bad Check Fee:	.00	Notice2 Date:	
Paid Amount:	200.00	Notice3 Date:	
Dismissed:	.00	Notice4 Date:	
Amount Due:	.00	Partial Notice:	
Disposition:	PT	Collection Letter:	
Disp. Date:	04/24/2012	Ticket Type:	Minor
Ticketed:	04/24/2012	Ticket Status:	PAID

Print Page **Cancel**

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

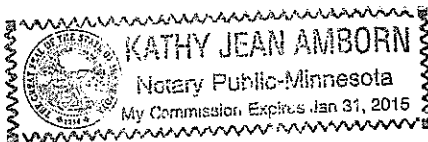
Dawn M. Anderson, being first duly sworn, on oath, deposes and says that on the 12th day of July, 2012, at the City of Duluth, St. Louis County, Minnesota, she served the attached Notice of and Order for Hearing, by depositing a copy in the United States Mail, in an envelope pre-stamped and addressed to:

City Wine & LQR Store, Inc.
d/b/a Warehouse Liquor Store
Attn: Randolph Mallow
104 West Central Entrance
Duluth, MN 55811

Dawn M. Anderson
Dawn M. Anderson

Subscribed and sworn to before
me a notary public this 12th day
of July, 2012.

Kathy J. Amborn
Notary Public



**Alcohol, Gambling, and Tobacco Hearing
September 5, 2012
City Wine & Liquor Store, Inc., d/b/a Warehouse Liquor Store,
104 West Central Entrance**

- Mallow: I am Randy Mallow and owner of Warehouse Liquor.
- Lehr: Commission members. This matter is not contested. I spoke with Mr. Mallow the other day and he is stipulating that the violation alleged in the Notice of Hearing did occur at the licensed premises which is a violation on April 11 of this year a sale to a minor. Mr. Mallow is president of the licensee and acknowledges that the violation did occur but he does wish to be heard in regards to the proposed penalty.
- Mallow: I just want to let you know what happened and what actions I have taken since then to keep that from happening again. The clerk had asked, at least that is what I have been told, the clerk had asked for the person's ID. She unfortunately didn't look at it closely enough to get the right date on it. But immediately after she was fired on the spot. I personally retrained all the clerks in not only asking for the ID's, but looking at the dates very carefully. When her name came in the paper with the fine, I made copies and they are all hanging on the registers for the clerk to look at when they are working.
- Hickok: Have you ever had a violation before?
- Mallow: I had on other violation quite a few years ago but I am not exactly sure.
- Hickok: Is that on the city's records as far as how long ago it was?
- Lehr: I don't have the information so I'm not sure when it was.
- Mallow: I have owned the store for 36 years. It has been pretty good most of the time.
- Hickok: Do you have a training process for your staff?
- Mallow: Yes I do. I have a training process and every few months I go through with each person and talk to them about it again and go over it. To make sure they are aware of it and not just letting it slide and forgetting about. Like I said, she did ask for the person's ID. She just said she didn't have her glasses. I guess that is what I get for hiring an older person. I apologize for that.
- Hanson: Have you ever sent your people or you attending any of the classes?

Mallow: No.

Hanson: I might suggest you might want to give that a try. There are some positive reinforcement techniques that are available that might even be more effective.

Mallow: I do have it posted that if someone who is underage that is not sold to, I do give them a reward of \$50.

Hanson: I am personally of the opinion that a positive approach is better for personnel and better in the long run. According to this, Heather Axtell has not paid her fine?

Mallow: She was my employee.

Hanson: What were you assessed?

Mallow: So far I have paid \$200 to the city.

Hanson: Wasn't there another \$200?

Lehr: The fine for the licensee violation is typically \$200 or \$250 dollars. In this particular case, the employee paid a higher fine because she was issued a District Court ticket, and often times the judges on the local bench will decide for themselves what type of fine they wish to impose. They might impose a \$200 or \$250 and I have seen the fines go as high as \$500 from the local bench.

Hanson: Thank you Ms. Lehr.

Mallow: Hers was actually \$585. I have to tell you that it is quite a deterrent. Just as a side comment, I know that it is my responsibility as the licensee. But I know clerks in the past that have gotten off pretty easy. This is a real good deterrent to punish the person who actually does it.

Pekkala: I kind of like the idea that you having the ticket hanging there on the register. If a clerk sees that it may cost them almost \$600, it is a pretty good deterrent. Any other questions from the commission?

Hanson: Do you have anything to offer that would make us think there were mitigating circumstance to suggest a reduction in the fine?

Mallow: Not really. The only thing is that I have a pretty good record for many years. Being a small family owned business I am there pretty much every day keeping on top of it, like a lot of them now days. I really don't have anyone on hand that is really in charge or cares about it. I care about it.

- Hickok: I would like to make a motion to reduce your fine from \$500 to \$300, contingent on Commissioner's Hanson's suggestion you do either yourself or you send one of your managers to an official training that he referenced. In doing so, then you will have the official process in place to properly train your employees and other staff. I just think that both the positive reinforcement and the measures you took were good to see as well. And also considering the fact that you haven't been here for a violation for quite some time. All those variables taken into consideration along with you agreeing to take that official training warrants a reduction in the fine.
- Lutterman: Commissioners. The code as it currently reads does not allow the commission to make a recommendation that any portion of the fine be stayed in any way, shape, or form. In order to reduce the presumptive penalty, the commission must make findings of mitigating circumstances that would justify a reduction of the fine. So there is a difference between staying the payment conditioned upon certain things, that is not allowed any longer in the code. If you believe a reduced fine is appropriate in this case, you need to identify what mitigating circumstances justify that reduction.
- Hickok: In this case, the mitigating circumstances would be he hasn't had a fine in quite some time, and the employee did ask for the ID, but just didn't thoroughly check it and follow through. I think that is something the training would help the business owner in training the staff. Taking into the consideration those variables, I would think those would be the mitigating circumstances.
- Pekkala: Motion has been made and second. Motion fails for a lack of a second. Anyone else with a motion?
- Hanson: I move that we follow the recommendation of the city attorney of the first offense of \$500 payable within 30 days.
- Birchland: I'll second that.
- Pekkala: All those in favor say yea?
Yeas: Birchland, Hanson, Stauber, Pekkala - 4
Nays: Hickok - 1
- Motion passes.
- Mallow: Thank you.